THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Civil Misc. Writ Petition (M/S) No. 1262 of 2005
(Under Article 227 of the Constitution of India)

Ban Panchayat Natadol through Sarpanch, Gopal Dutt Joshi
Village Natadol, Patti Motia Pathar, Tehsil Jaiti,
District Almora.. … **Petitioner.**

Versus

1. Sri Liladhar Pandey S/O Sri Laxmi Dutt Pandey,
   Village Natadol, Patti Motia Pathar, Tehsil Jaiti,
   District Almora.
2. State of Uttaranchal through District Collector Almora,
3. Forest Range Officer, North Gola Forest Range
   Nathuwakhan,
   District Nainital,
4. Civil Judge Junior Division, Almora.

… **Respondents.**

Sri R.C.Upadhyay, learned counsel for the petitioner.
Sri Vijay Bhatt, learned counsel for respondent no.1
Sri Nand Prasad, Learned Standing Counsel for the respondent No. 2 to 4.

Dated March 09, 2006

PC:
(Hon'ble B.S. Verma, J.)

The petitioner has filed the present writ petition against the impugned order dated 18-8-2005 (Annexure-5) passed by learned Civil Judge (Jr.Div.) Almora, whereby the application for survey through survey commissioner has been rejected.

The defendant-petitioner moved application (40-C2) before the court below with the averment that the plaintiff as well as defendants were claiming title on the disputed number therefore survey is necessary. The learned counsel for the petitioner has submitted that he had also pleaded the fact in paragraph nos. 14 and 16 of the written statement.

In para no. 14 of the written statement it has been pleaded that the disputed numbers 4326, 4327 belong to Ban

Panchayat and the defendant nos. 1 and 2 are the owners of the land in dispute. He further pleaded in paragraph no. 16 that disputed land of plot nos. 4326 and 4327 is the land of Forest hence no right can accrue to the plaintiff. In the written statement as well as in the application 40-C2, no dispute has been raised regarding the identifiability/identification of the land and by the impugned order the learned Civil Judge (Jr.Div.) has rejected the application on the ground that there is no dispute of identification of land and there is a dispute of title between the parties.

In the facts and circumstances of the case, the finding of the trial court does not suffer from any illegality or perversity, because the survey can only be made if there is a dispute regarding identification of land. It reveals from the application as well as written statement filed by the defendant-petitioner that it is a dispute of title and title can be proved by filing evidence. The writ petition is devoid of merit.

The writ petition is dismissed.

The interim order dated 28-10-2005 passed by this Court is hereby vacated.

A copy of this order be issued to the learned counsel for the petitioner on payment of usual charges today.

(B.S. Verma, J.)

RCP